

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of the Department of Insurance and Financial Services

In the matter of:

The Recovery Project, LLC

Petitioner

File No. 21-1766

v

MemberSelect Insurance Company

Respondent

**Issued and entered
this 7th day of February 2022
by Sarah Wohlford
Special Deputy Director**

ORDER

I. PROCEDURAL BACKGROUND

November 22, 2021 and November 24, 2021, The Recovery Project, LLC (Petitioner) filed with the Department of Insurance and Financial Services (Department) two requests for an appeal pursuant to Section 3157a of the Insurance Code of 1956 (Code), 1956 PA 218, MCL 500.3157a.¹ The requests for an appeal concern the determination of MemberSelect Insurance Company (Respondent) that the Petitioner overutilized or otherwise rendered or ordered inappropriate treatment, products, services, or accommodations under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Respondent issued the Petitioner written notices of the Respondent's determinations under R 500.64(1) on August 23, 2021, and September 30, 2021, respectively. The Petitioner now seeks reimbursement in the full amount it billed for the dates of service at issue.

The Department accepted the requests for an appeal on December 1, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's requests for an appeal on December 1, 2021, and provided the Respondent with a copy of the Petitioner's submitted documents. The Respondent filed a reply to the Petitioner's appeal on December 14, 2021.

¹ The requests for appeal have been consolidated by the Department and are both addressed herein.

The Department assigned an independent review organization (IRO) to analyze issues requiring medical knowledge or expertise relevant to this appeal. The IRO submitted its report and recommendation to the Department on January 11, 2022.

II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for physical therapy services rendered to the injured person on six dates of service at issue² under Current Procedural Terminology (CPT) codes 97112, 97140 and 97530, which are described as: therapeutic procedure, 1 or more areas, each 15 minutes, neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture, and/or proprioception for sitting and/or standing activities; manual therapy techniques (e.g., mobilization/manipulation, manual lymphatic drainage, manual traction), 1 or more regions, each 15 minutes; and therapeutic activities, direct (one-on-one) patient contact (use of dynamic activities to improve functional performance), each 15 minutes; respectively.

With its appeal request, the Petitioner submitted documentation identifying the following diagnoses for the injured person in relation to a motor vehicle accident in April 2014: spinal cord injury C2 (ASIA B) resulting in ventilator dependence, right upper extremity superficial venous thrombosis, hyperchloremia, neurogenic bladder and bowel, frequent UTIs, Wallerian degeneration, intramedullary hematoma, PEG tube, dysphonia, depression, insomnia, dysphagia, chronic neck pain, pericarditis, dysreflexia, orthostatic hypertension, and a stage 2 wound over the posterior skull. The Petitioner cited the American Physical Therapy Association practice guidelines and evidence-based research in support of its appeal.

The Petitioner's request for an appeal further stated:

The [Official Disability Guidelines] are based on guidelines for common health disorders among workers...[and] do not consider the need of skilled service to optimize function, maintain the [injured person's] condition or to prevent or slow further deterioration. ... Rehabilitative therapy is required for [the injured person's] diagnosis and stage of recovery to continue to facilitate [the injured person's] potential improvement and response to therapy.

In its reply, the Respondent cited the American College of Occupational and Environmental Medicine (ACOEM) guidelines as well as the Official Disability Guidelines (ODG) and noted that a maximum of 182 visits of physical therapy could be approved over the course of 26 weeks. Respondent denied payment for the dates of service at issue on the basis that they exceeded the maximum recommended treatment amount per ACOEM recommendations and ODG.

² The dates of service at issue in this appeal are July 1, 8, 15, 22, 29, 2021; and August 12, 2021.

III. ANALYSIS

Director's Review

Under MCL 500.3157a(5), a provider may appeal an insurer's determination that the provider overutilized or otherwise rendered inappropriate treatment, products, services, or accommodations, or that the cost of the treatment, products, services, or accommodations was inappropriate under Chapter 31 of the Code. This appeal involves a dispute regarding inappropriate treatment or overutilization.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, the at-issue treatment was not overutilized in frequency and duration and that the previous adverse determinations should be overturned.

The IRO reviewer is a practicing and board-certified orthopedic physical therapist who is knowledgeable with respect to the medical conditions and type of treatment at issue in this appeal. In its report, the IRO reviewer referenced R 500.61(i), which defines "medically accepted standards" as the most appropriate practice guidelines for the treatment provided. These may include generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government or national or professional medical societies, board, and associations. The IRO reviewer relied on the Milliman Care Guidelines (MCG) and evidence-based literature in reaching its determination.

The IRO reviewer opined that:

While [305 physical therapy visits] is excessive under normal circumstances, the extent of [the injured person's] injuries, comorbidities, and expected very slow progress with [the] injuries warrant [the additional treatment. The clinical note dated 7/29/21 noted a change in medication that has improved tone, allowing for progress in therapy and expectation for continued improvement that would require the skills of a physical therap[ist] to manage. The [dates of service at issue] were medically necessary.

The IRO reviewer recommended that the Director reverse the Respondent's determinations that the physical therapy treatment provided to the injured person on the dates of service at issue was not medically necessary in accordance with medically accepted standards, as defined by R 500.61(i).

IV. ORDER

The Director reverses the Respondent's determinations dated August 23, 2021, and September 30, 2021.

For the July 1, 2021, date of service at issue, the Petitioner is entitled to payment in the full amount billed and to interest on any overdue payments as set forth in Section 3142 of the Code, MCL 500.3142. R 500.65(6). The Respondent shall, within 21 days of this order, submit proof that it has complied with this order.

With respect to the remaining dates of service at issue discussed herein, the Petitioner is entitled to reimbursement in the amount payable under MCL 500.3157 and to interest on any overdue payments as set forth in Section 3142 of the Code, MCL 500.3142. R 500.65(6). The Respondent shall, within 21 days of this order, submit proof that it has complied with this order.

This order applies only to the treatment and dates of service discussed herein and may not be relied upon by either party to determine the injured person's eligibility for future treatment or as a basis for action on other treatment or dates of service not addressed in this order.

This is a final decision of an administrative agency. A person aggrieved by this order may seek judicial review in a manner provided under Chapter 6 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.301 to 24.306. MCL 500.244(1); R 500.65(7). A copy of a petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of Research, Rules, and Appeals, Post Office Box 30220, Lansing, MI 48909-7720.

Anita G. Fox
Director
For the Director:

X *Sarah Wohlford*

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford